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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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JOHN SOUZA, in his capacity as custodian of  
ELEVATE, INC.,

Movant,

v.

W. WRIGHT THURSTON,

Respondent.

**MEMORANDUM DECISION AND  
ORDER**

Case No. 2:18-mc-00023-DB-BCW

District Judge Dee Benson

Magistrate Judge Brooke Wells

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Pursuant to [28 U.S.C. § 636\(b\)\(1\)\(A\)](#) District Judge Dee Benson referred this case for consideration.<sup>1</sup> This case involves a case in the District Court of Nevada, Case No. 2:17-cv-01924.

It appears John Souza (Souza), in his capacity as custodian of Elevate, Inc., obtained a subpoena in the Nevada action for W. Wright Thurston (Wright), seeking corporate and banking records relating to Elevate, Inc. in the fall of 2017.<sup>2</sup> According to the subpoena, Wright resides in Midway, Utah.<sup>3</sup> The subpoena required production of said documents in “Atlanta, Georgia” by “November 9, 2017.”<sup>4</sup> Souza served the subpoena via certified mail to a P.O. Box.<sup>5</sup> Pending before the court is Souza’s *Motion for Order to Show Cause and to Compel Compliance with*

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<sup>1</sup> ECF No. 5.

<sup>2</sup> ECF No. 2-1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> ECF No. 2-2.

*Subpoena*.<sup>6</sup> Wright has moved to quash the subpoena.<sup>7</sup> The court finds Wright's arguments persuasive and thus DENIES Souza's motion.

### ANALYSIS

Rule 45(c)(2) of the Federal Rules of Civil Procedure provides:

A subpoena may command: (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed or regularly transacts business in person[.]

Midway, Utah, where Wright resides, is more than 100 miles away from Atlanta, Georgia, where the subpoena commands production of the documents. In addition, it appears the first service attempt was a P.O. Box address even though Souzas' counsel has a residential address for Wright.<sup>8</sup> Notably, there does not appear to be binding precedent in the Tenth Circuit favoring either hand-to-hand personal service or alternative means of service.<sup>9</sup> But this court has viewed service by certified mail as a means of alternative service usually granted via motion after some attempts by personal service have proven unsuccessful.<sup>10</sup> Here, the first attempt at service was through certified mail at a P.O. Box, even though counsel had a residential address.<sup>11</sup> Under these circumstances, alternative

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<sup>6</sup> See ECF No. 2.

<sup>7</sup> ECF No. 13.

<sup>8</sup> The Certificate of Service for ECF No. 2 has two addresses, the P.O. Box address and a residential address for Wright.

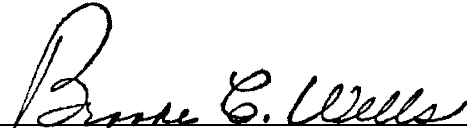
<sup>9</sup> See *E.A. Renfroe & Co. Inc. v. Moran*, No. 08-cv-732-RPM-KMT, 2008 WL 1815535, at \*3 (D. Co. 2008).

<sup>10</sup> See *Vision Sec., LLC v. Xcentric Ventures, LLC*, 2:13-cv-926, 2016 WL 2766635 (D. Utah 2016).

<sup>11</sup> Souza's counsel argues there is a hand-written note that says "REFUSED" on the Certified Mail Receipt and this is proof Wright tried to evade service. Wright submitted a Declaration

service would not be warranted. Moreover, the 100 mile geographic limit set forth in Rule 45(c)(2) for production of documents is clearly exceeded here, thus the motion to compel is DENIED.<sup>12</sup>

DATED this 4 September 2018.

  
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Brooke C. Wells  
United States Magistrate Judge

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with his papers wherein he adamantly claims he never received the subpoena. Wright claims he first learned of this matter when he received the Motion for Order to Show Cause, which was served at his residence. There is obviously a factual dispute between the parties, but the court did not address it in order to reach its decision.

<sup>12</sup> Wright submitted a Declaration with his papers, however, it cites the state statute instead of 28 U.S.C. §1746 and is not signed by him; therefore since it is unsworn its contents could not be considered by the court in its analysis.